

Fact Sheet

New requirements for Building Fire Safety Regulation

The purpose of this fact sheet is to inform certifiers, councils, industry practitioners, and affected building owners and developers of new fire safety requirements for buildings.

Introduction

This document summarises the changes introduced by the *Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment (Fire Safety) Regulation 2022* (the **Amending Regulation**), to improve fire safety in new and existing buildings. The Amending Regulation was published on the NSW legislation website on 16 December 2022.

The reforms implement recommendations from a report commissioned by the Office of the NSW Building Commissioner, *Improving fire safety in new and existing buildings*, published in October 2021.

The Amending Regulation will commence in stages to assist the transition for industry and property owners. Some changes applied from February 2023 while others will not come into effect until August 2023 and February 2025.

Overview of Amending Regulation

The Amending Regulation amends the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (the **DCFS Regulation**) by:

- increasing oversight of fire safety performance solutions through enhanced involvement of Fire and Rescue NSW (**FRNSW**);
 - establishing a new category of accredited independent practitioner to assess and verify the performance of newly installed fire safety measures for the purposes of the fire safety certificate and before occupation of the building
 - requiring a fire safety certificate to be taken into account before the issue of a building compliance declaration under the *Design and Building Practitioners Act 2020*;
 - improving the documentation that is relied on for certification, inspection and maintenance of fire safety measures; and
 - mandating the procedures for the routine maintenance of fire safety measures.
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Explanation of the changes

Changes that commenced in February 2023

Corrections to fire safety schedules

From 13 February 2023, the Amending Regulation permits the re-issue of a fire safety schedule on request by a building owner to correct minor errors or omissions or to replace a missing schedule.

Previously, the only pathways for the correction of an incorrect fire safety schedule under the legislation was through obtaining a development control order (fire safety order) with an amended schedule, or obtaining a complying development certificate, or a development consent and construction certificate with an amended schedule. These pathways were not designed for minor corrections.

The Amending Regulation only permits schedules to be re-issued through this pathway to resolve errors or omissions (such as typographical errors, incorrect address, omitted approved and installed measures) or to replace a lost or destroyed schedule, where one previously existed.

Principal certifiers can re-issue a fire safety schedule if the certifier has not yet issued an occupation certificate and is satisfied there are errors or omissions in the schedule that require correction. Only a council can re-issue a fire safety schedule if the schedule has been lost or destroyed, or to correct errors or omissions if an occupation certificate has already been issued.

Principal certifiers and councils should determine which pathway to use to update the schedule for the specific circumstances.

Where principal certifiers re-issue a schedule they must give the council a copy of the reissued schedule and evidence of the errors or omissions that required correction.

The Amending Regulation does not offer a way to authorise illegal building work i.e.. work that is not authorised by consent or an order. It specifically prohibits the correction or re-issue of a schedule if errors or omissions occurred due to building work, or a change in the plans or specifications for the fire safety measures of the building.

Building practitioner declaration

From 13 February 2023, the Amending Regulation requires building practitioners who issue a building compliance declaration under the *Design and Building Practitioners Act 2020* to lodge a copy of the fire safety certificate with their declaration.

The Amending Regulation requires building owners to provide the fire safety certificate to the building practitioner(s) making a declaration.

This amendment will help ensure that building practitioners take into account the fire safety certificate in issuing a building compliance declaration.

Changes commencing August 2023

Consultation with FRNSW

From 1 August 2023, the Amending Regulation will expand the types of building proposals that must be referred to FRNSW for comment and the stages for referral.

For Class 2 to 9 buildings, certifiers are already required to refer some building proposals involving fire safety performance solutions to FRNSW. However, these requirements only apply to certain types of buildings where the building work meets a limited set of criteria. On the other hand, under the National Construction Code, 'relevant stakeholders' — including FRNSW — are required to be consulted when developing performance based design briefs for fire safety performance solutions.

The Amending Regulation will mandate consultation with FRNSW for all building work that involves a performance solution for a fire safety requirement in a building other than in a Class 1a, 1b or 10 building, or a temporary structure. 'Fire safety requirement' is defined in the DCFS Regulation as 'a requirement under the Building Code of Australia relating to a fire safety system within the meaning of the Building Code of Australia, or the safety of persons if there is a fire, or the prevention, detection or suppression of fire'.

The amendment means that:

- **Before lodging a construction certificate application:** The owner of a building must ensure the person who develops a performance-based design brief for a fire safety performance solution

(usually a fire safety engineer) for Class 2–9 buildings, where a construction certificate is to be issued, consults FRNSW during the development of the performance-based design brief.

- **Before determining a construction certificate or occupation certificate application:** The certifier must refer all performance solutions involving a fire safety requirement for Class 2–9 buildings to FRNSW at both the construction certificate and occupation certificate stages.

The criteria for requesting from FRNSW a fire safety system report for Class 2 or 3 buildings will not change.

It will be up to FRNSW to decide which proposals they comment on. Where FRNSW provides comments on a design brief or a report to the certifier within required time limits, the owner or the certifier must take the comments into account.

The certifier can proceed with issuing a construction certificate, or the building owner can proceed with implementing a performance solution after the design brief stage, after:

- FRNSW notifies it will not provide comments on a design brief or an initial fire safety report, or
- FRNSW fails to notify that it will provide comments or an initial fire safety report:
 - at the design brief stage, within 10 working days of the request being made; and
 - at the construction certificate stage, within 10 working days of receiving the referral from the certifier, or
- FRNSW fails to provide comments or its report within required time limits.

The certifier can proceed with issuing an occupation certificate without considering a report from FRNSW if FRNSW has not provided its report within 10 working days after receiving the request for the report.

The time limits for certifiers to refer matters, for FRNSW to notify receipt and for FRNSW to notify whether they are providing a report or provide the report, will be in working days rather than in the current calendar days.

To provide comments FRNSW will have:

- at the **design brief** stage – 20 working days after the request for comments was made.
- at the **construction certificate** stage – 25 working days after the referral was received.
- at the **occupation certificate** stage – 10 working days after receiving the request for a report.

If a certifier has not adopted a recommendation that FRNSW has provided, the certifier must notify FRNSW in writing the reasons for not doing so.

The changes detailed above only apply where the construction certificate or occupation certificate application is lodged on or after 1 August 2023.

Standardised mandatory template for fire safety schedules

From 1 August 2023, the Amending Regulation requires local councils and certifiers to use a mandatory fire safety schedule template for Class 1b to 9 buildings where new fire safety measures are proposed or existing measures are changed.

The template will be made available on the NSW Government website prior to August 2023. The template will help reduce mistakes, omissions or ambiguities in schedules. It will complement the existing templates for the fire safety certificate and annual fire safety statement.

Existing buildings will not have to use the standard template unless a new schedule is required. Where a council re-issues a fire safety schedule when corrections are needed or for missing schedules, it is not required to use the new template unless the new form was already required for the existing or replaced schedule.

Changes commencing in or around February 2025

Mandatory routine servicing requirements

From 13 February 2025, the Amending Regulation will mandate processes for the routine maintenance of specific essential fire safety measures. These requirements apply to buildings where annual or supplementary fire safety statements are required.

Currently, the DCFS Regulation requires building owners to ensure that each essential fire safety measure in their building performs to at least the standard specified in the fire safety schedule or, for some pre-1997 buildings, at least to the standard the measure was originally designed and installed. This would necessarily involve routine maintenance even though processes for routine maintenance have not previously been specified in the DCFS Regulation.

The Amending Regulation will require owners to ensure that inspection, testing and, where applicable, other servicing of essential fire safety measures in new and existing Class 1b to 9 buildings are done in accordance with Australian Standard 1851-2012 *Routine service of fire protection systems and equipment (AS 1851)*, where applicable. The standard covers testing processes, frequency and documentation for specific fire safety measures.

AS 1851 will not apply to measures not covered by the standard or where the fire safety schedule specifies a different maintenance process (if that process is part of an approved performance-based solution). However, these measures will still need to be maintained to the standard of performance specified in the schedule even if maintenance processes are not mandated through the regulation.

Where AS 1851 applies, documentation of the maintenance will also need to comply with the current version of AS 1851.

These new requirements supplement the need for building owners to demonstrate (through a statement known as the fire safety statement issued at least annually), that each essential fire safety measure in the building has been verified as being found to be capable of performing to the required standard.

Local councils and FRNSW will have powers to inspect routine maintenance records, which must be kept on site, and will be able to issue penalties for any breaches.

Fire safety system accredited assessors

The Amending Regulation will require owners to ensure that accredited people assess each essential fire safety measure before the owner issues a fire safety certificate for Class 1b to 9 buildings. The certificate confirms that each of the fire safety measures that apply to a building (as listed in the fire safety schedule) have been installed and checked.

Currently, a “properly qualified person” must conduct this assessment(s) before the owner issues the certificate. A “properly qualified person” is a person the owner regards as qualified. There is no accreditation requirement.

An accredited assessor will be someone authorised for this specific function by an accreditation authority approved under the *Building and Development Certifiers Act 2018*. As different specialists are required for different fire safety systems, it is expected that there would be different competency requirements for the roles. To ensure independence, the accredited person must not have installed a fire safety measure they assess.

To allow sufficient time for a new accreditation scheme to be developed and for applicants to become accredited, the new requirement for accredited persons to assess fire safety measures for a fire safety certificate will only apply from 13 February 2025, or 18 months after an accreditation authority is approved, whichever occurs first. Stakeholders will be notified when an accreditation authority and scheme has been established.

The Amending Regulation will not affect developments that already have fire safety certificates unless new building works trigger the need for a fire safety certificate.

The owner will need to include the details of the accredited practitioners who assessed each measure on the fire safety certificate– including the practitioner’s name and accreditation number.

Transitional arrangements

The new and changed requirements under the Amending Regulation commence on the following dates:

Date	Changes that will take effect
13 February 2023	<ul style="list-style-type: none">• Councils / certifiers able to correct minor errors in fire safety schedules or to replace a missing schedule• Builders required to lodge fire safety certificate with building compliance declaration
1 August 2023	<ul style="list-style-type: none">• Expanded requirements for developers and certifiers to consult with Fire and Rescue NSW on fire safety performance solutions• Councils / certifiers required to use fire safety schedule template
13 February 2025	Building owners applying mandatory procedures for routine maintenance of fire safety measures
13 February 2025, or 18 months after an accreditation authority is approved, whichever occurs first	Accredited person(s) required to certify newly installed fire safety measures before the building owner issues the fire safety certificate

Transitional arrangements for specific reforms are described above.

Further information

For further information, please see [Reforms to Fire Safety Regulation 2022](#) on the Fair Trading website.

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